

and have added new claims 19-26. Applicants submit that Kawakami, with a publication date of July 3, 1997, does not qualify as prior art against the present claims. Specifically, Applicants claim priority based upon Japanese Patent Application No. 9-114951 and have submitted herewith a translated copy of the entire priority document, in accordance with 37 CFR § 1.55(a)(4), MPEP § 201.13, and 35 U.S.C. § 119(b)(3), in order to properly perfect priority. Thus, Applicants submit that the present invention, as set forth in new claims 19-26, is allowable over Kawakami.

Responsive to the rejection of claim 5 under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,600,483 (Fan et al), Applicants have cancelled claim 5 and have added new claims 19-26. Applicants submit that claims 19-26 are in condition for allowance.

Claim 19 recites in part:

forming layers with at least two kinds of materials sequentially and periodically on a substrate having two-dimensionally periodically recessed or projecting portions...

Applicants submit that such an invention is neither taught, disclosed, nor suggested by Fan et al or any of the other cited references, alone or in combination.

Claim 19 recites, in part, "employing sputter etching... at least in a part of said structure ..." Applicants submit that

such an invention is neither taught, disclosed, nor suggested by Fan et al or any of the other cited references, alone or in combination.

For all the forging reasons, Applicants submit that claim 19, and claims 20 and 21 depending therefrom, are now in condition for allowance and hereby respectfully request the allowance thereof.

Claim 22, in addition to being dependent upon allowable claim 19, recites in part:

comprising at least two kinds of material, at least one said material being a transparent material whose period in at least one dimension is of the order of or a fraction of a wavelength of concerned light.

Applicants submit that such an invention is neither taught, disclosed, nor suggested by Fan et al or any of the other cited references, alone or in combination.

Fan et al discloses a 3D periodic dielectric structure (photonic crystal) that is essentially a layered structure made of a first material having a first dielectric constant and interlayed parallel rows of a second material, preferably having a second dielectric constant different than the first such constant. Fan et al does not disclose or suggest that at least one of those materials should be a transparent material and clearly does not disclose or suggest such a transparent material having a period in at least one dimension that is of the order of or the fraction of a wavelength of concerned light. Fan et al is

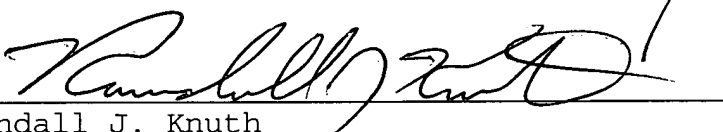
instead concerned with the band gap that can be achieved with respect to structure 10. Thus, Fan et al fails to teach or suggest the present invention as set forth in claim 22.

Applicants further submit that the elements set forth in each of claims 23-26 are neither disclosed nor suggested by Fan et al or any of the other cited references, alone or in combination.

For all the foregoing reasons, Applicants submit that claim 22, and claims 23-26 depending therefrom, are now in condition for allowance, the allowance of which is hereby respectfully requested.

If the Examiner has any questions or comments that would speed prosecution of this case, the Examiner is invited to call the undersigned at 260/485-6001.

Respectfully submitted,


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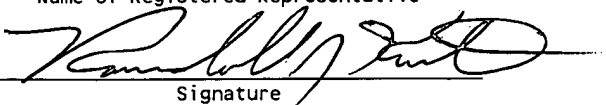
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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Hon. Commissioner of Patents and Trademarks, Washington, D.C. 20231, on: October 29, 2002.

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Date